

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6520 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SHARDULBHAI GABHUBHAI

Versus

MAMLATDAR

Appearance:

MR MC BAROT for Petitioners

MS MANISHA LAVKUMAR for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/09/2000

ORAL JUDGEMENT

1. In this matter, arguments were heard on 11-8-2000 and it was ordered to be placed for dictation of order in Court on 25-8-2000. Thereafter, this matter was adjourned for two times on the request of the counsel for the petitioner.

2. The petitioners by this petition are praying for the following reliefs:

- (A) Your Lordships would be pleased to issue ad-interim injunction restraining the respondents from disturbing the peaceful possession of the petitioners and be further pleased to direct the respondents not to take the possession and not to demolish the houses of the petitioners on Survey No.1775 paiki of Gola talawadi,
- (B) Your Lordships would be pleased to issue a writ of mandamus or any other appropriate, writ, order or direction for quashing and setting aside the orders passed by the Mamlatdar in Daban Case No.8/85-86 and be further pleased to direct the respondents to regularise the encroachment on Survey No.1775 paiki of Gola talawadi,
- (C) grant such other and further relief and passing such other and further orders as the circumstances of the case may require,
- (D) award the costs of the petition.

3. In para-2 of the special civil application, the petitioners admitted that the land in their possession belongs to the Government. The petitioners have failed to produce on the record any material to show their right, title and interest therein. They have come up with the case that they are in possession thereof for last 60 to 70 years. In support of this their contention, they failed to produce any evidence whatsoever. It is a question of fact and it has to be established to the satisfaction of the Court by producing cogent and satisfactory evidence and that has not been produced. The petitioners are the ranked trespassers on the Government land and this Court cannot protect them. The matter is squarely covered by the decision of the Hon'ble Supreme Court in the case of Premji Ratansey Shah and Ors. vs. Union of India and Ors. reported in 1995 (5) SCC 547 and of the Division Bench decision of this Court in the case of Anupam Rekadi Cabin Association vs. J.M. Corpn. reported in 1995 (1) GLH 586.

4. In the result, this special civil application fails and the same is dismissed. The petitioners are illegally occupying the land in dispute for all these years. They are ranked trespassers on the Government land. They are enjoying this land under the interim

relief granted by this Court. But for the interim relief granted by the Court, the respondents by now would have taken possession of the land from the petitioners. For this deprivation of the possession of this land, the respondents have to be reasonably compensated by the Court. Each petition is occupying about 15 X 20 sq. mts. of land i.e. 300 sq. mts. From the date of filing of this petition, they are to pay mesne profit at the rate of Re.1/- per sq. mt. per month for use and occupation thereof. The respondents are free to recover mesne profit at the aforesaid rate from the petitioners. Rule discharged. Interim relief, if any, granted stands vacated. The petitioners are directed to pay Rs.1000/= as costs of this petition to the respondents.

zgs/-